



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

Address: COMMISSIONER FOR PATENTS

P.O. Box 1450

Alexandria, Virginia 22313-1450

www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/559,656	12/05/2005	Claire Cecilia Paul	117-569 (AMK)	7207
23117 7590 12/30/2009 NIXON & VANDERHYE, PC 901 NORTH GLEBE ROAD, 11TH FLOOR ARLINGTON, VA 22203				
EXAMINER ALEXANDER, REGINALD				
ART UNIT		PAPER NUMBER		
3742				
MAIL DATE		DELIVERY MODE		
12/30/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/559,656

Applicant(s)

PAUL ET AL.

Examiner

Reginald L. Alexander

Art Unit

3742

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 October 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 113-131 and 133-146 is/are pending in the application.
- 4a) Of the above claim(s) 113-130 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 145 and 146 is/are allowed.
- 6) ☒ Claim(s) 131 and 133-142 is/are rejected.
- 7) ☒ Claim(s) 143 and 144 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

This application contains claims 13-130 drawn to an invention nonelected with traverse in the reply filed on 17 April 2009. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 131, 135 and 136 are rejected under 35 U.S.C. 102(b) as being anticipated by Anson.

There is disclosed in Anson a food preparation device, comprising: a water chamber 14; a water dispensing controller, including a control valve 30 and a microprocessor 80 for controlling the flow of water from the chamber; a weighing apparatus 120 associated with a bottle (vessel) receiving station to determine the weight of a received vessel; wherein the water dispensing controller is arranged to control the dispensing of water to the receiving station according to weight information received from the weighing apparatus.

In regards to claim 135, a manual override could include merely shutting down operation of the valve. This could include turning off the system or disconnecting the valve.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 133, 134 and 137-142 are rejected under 35 U.S.C. 103(a) as being unpatentable over Anson in view of Clubb.

Clubb discloses a food preparation device having, a water dispensing chamber 14 and water dispensing controller 18, 48; a formulation receptacle 16 for containing food preparation and food dispenser 22; wherein the water dispensing controller is programmed to deliver a measured amount of water to a bottle receiving station for a measured amount of time, and the food dispenser is configured to match the amount of food dispensed to the bottle receiving station based upon the amount of water provided.

It would have been obvious to one skilled in the art to provide the device of Anson with the formulation receptacle and dispenser taught in Clubb, in order to prepare a food preparation without having to use a separate device, as is taught in Anson with the disclosure of a separate coffee maker connected to the device.

Allowable Subject Matter

Claims 145 and 146 are allowed.

Claims 143 and 144 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

Applicant's arguments filed 09 October 2009 have been fully considered but they are not persuasive. Applicant argues that the terminology of claim 132 makes way for a controller, which based upon a food preparation weight, would enable the amount of water dispensed to be adjusted accordingly. Thus, making way for the dispensing of less water if the food preparation is underweight and more water if the food preparation is overweight. In response to this argument it should be noted that nowhere in claim 132 is there mention of a varied amount of water being provided based upon the weight of the bottle and its contents. The claim makes mention that the weighing apparatus is constructed and arranged to determine the weight of any food preparation formulation in a bottle, i.e. bottle and contents weight determine. The claim goes on to state that the dispensation controller is configured to match the amount of water dispensed to the determined weight of the bottle and contents so as to produce an amount of mixed food and predetermined concentration of formulation to water. Thus, after a weight has been determined an amount of water is provided. There is nothing in the claim stating that a smaller amount is provided if the weight is deemed to be under a predetermined amount, or that more is provided if the weight is deemed to be over a predetermined

amount. The broad recitation of the claim can be understood to mean that water is provided after the weight is determined.

Looking at the Anson reference it appears that a varied amount of water is provided based upon the weight of a bottle and its contents as determined by a weighing mechanism before the dispensing of water. This is proven in applicants paraphrasing of Anson on page 12 of the remarks by applicant. It is stated in Anson, "... if the microprocessor controller realizes that, for example, only 70% of the intended weight of powdered formulation has actually reached the bottle 79, it can reduce the amount of water to be transferred to the bottle so as to transfer only 70%...".

It can be noted that applicant has read too much function and structure into the claim language of claim 132, as the claim fails to disclose what is being argued.

It can also be noted that Anson appears to satisfy not only the language provided in claim 132 but the function being argued by applicant.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Reginald L. Alexander whose telephone number is 571-272-1395. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tu Hoang can be reached on 571-272-4780. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Reginald L. Alexander/
Primary Examiner
Art Unit 3742